

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of:

Jeffrey Winans  
10418 Capehart Court  
Montgomery Village, MD 20886

Complainant

Case No.: 556-O

vs.

Stedwick Homes Corporation  
and Montgomery Village Foundation  
c/o John F. McCabe  
200 A Monroe Street, Suite 300  
Rockville, MD 20850

Respondent.

**DECISION AND ORDER**

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on September 11, 2002 pursuant to Section 10B-5, 10B-9(a), 10B-10, 10B-12, and 10B-13 of the Montgomery County Code, and the duly appointed hearing panel having considered the testimony and evidence of record, finds, determines and orders as follows:

### BACKGROUND

Jeffrey Winans resides and owns the townhouse unit at 10419 Capehart Court, which is a unit within the Montgomery Village Foundation and Stedwick Homes Corporation, and Mr. Winans is subject to both Association documents.

In October of 2001, Mr. Winans purchased, and began parking in Front of his Townhouse, a 2001 Dodge Dakota Quad Cap which all parties agree is a Truck.<sup>1</sup> The Truck was tagged as being in violation on or about October 19, 2001 consistent with the Associations documents (Commission exhibit #1 - pg. 40), the association policy (Commission Exhibit #1 – pg. 110), applicable law and consistent with signs posted at the entrance to the community. There were numerous correspondences between the parties and Mr. Winans requested a hearing pursuant to the Stedwick Homes Corporation Procedures for Dispute Resolution (Commission Ex. #1 – pg. 23).

A hearing was held in an open session on December 21, 2001. Immediately following that the Board of Directors went into closed session to deliberate and consider Mr. Winans claims (Minutes of both these sessions were introduced and admitted into evidence as Respondents Exhibit #2 and #3). Mr. Winans claim was denied per a detailed letter dated December 26, 2001 (Commission Exhibit #1 – pg. 12).

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<sup>1</sup> In addition to the undisputed testimony from both parties that the vehicle is a truck, the parties agreed that the vehicle was no longer owned by Mr. Winans and the issue was moot. A preliminary motion to dismiss was filed as a result of this mootness because the matter is capable of repetition, the panel denied the Motion to Dismiss.

Separately, Mr. Winans sought information about the identity of the Respondent's agent who pasted violation stickers on the window of his truck at various times. Mr. Winans threatened to sue that individual for vandalism.

A complaint was filed by complainant with the Commission on Common Ownership Communities ("CCOC"). In that the dispute was not resolved through Mediation, and all procedures and remedies provided in the Association's documents were exhausted, the matter was referred to the CCOC for action pursuant to Section 10B-11(f) of the Montgomery County Code. This matter was heard on September 11, 2002 in a hearing before a panel consisting of Commissioners Richard Price, Howard Cihak and Panel Chair Jeffrey Van Grack.

Mr. Winans has made numerous allegations and as stated in the record of the hearing, they were articulated as follows:

- 1.) That the Stedwick Homes Corporation Board of Directors held a closed meeting on the evening of December 21, 2001, that was held at the conclusion of Mr. Winans presentation before the board.
- 2.) That he was refused documents from Stedwick Homes Corporation.
- 3.) That Montgomery Village Foundation and Stedwick Homes Corporation are one entity.
- 4.) That the Stedwicks Homes Corporation Parking and Communal Vehicular Rules and Regulations are invalid, arbitrary and capricious.

The allegations and issues that Mr. Winans made at the hearing were similar, but not identical to those made in his original complaint (Commission Ex. #1 – pg. 1-4). The original complaint included an allegation of vandalism, for which the Commission did not have jurisdiction. Indeed, the Commission authorized the panel limited jurisdiction.

#### APPLICABLE DOCUMENTS AND LAW

The applicable Sections of the Montgomery Village Foundation - Stedwick Homes Corporation documents provide as follows:

a) STEDWICK HOMES CORPORATION - Parking and General Vehicles Rules and Regulation<sup>2</sup>

3. “Restricted Vehicles – The following vehicles are specifically prohibited from parking overnight on community-owned or private property within the Stedwick Community. Overnight is defined to be ANY time during the hours of 9:00 pm to 6:00 am. These vehicles may be permitted if, and only if, consistently kept or maintained within the confines of a private garage and do not create a nuisance to other residents through unusual hours of operation or excessive noise. (Emphasis Added)

b. Private Trucks – “Private Trucks” include all vehicles designed for the transport of goods or services. The majority of such vehicles are commonly known as “pick-up” trucks, having an open back and a separate cab, and are prohibited regardless whether or not they have a “cap” or “camper” installed, and regardless of the number of passenger seats in the cab.” (Emphasis Added)

b) STEDWICK HOMES CORPORATION – Supplementary Declaration of Covenants, Conditions and Restrictions, recorded 08/23/67 at liber 3654 Folio 165 at Article Section 7 as follows:

“No private trucks or trailers and no unlicensed motor vehicles of any type shall be permitted to remain overnight on the property of a private dwelling unit within Stedwick, unless garaged.”

*(Emphasis Added).*

c) MARYLAND HOMEOWNERS ASSOCIATION ACT Section 11B – 111 – Meetings of homeowners association or its governing body.

“Except as provided in this title, and notwithstanding anything contained in any of the documents of the homeowners association:

- 1) Subject to the provisions of paragraph (4) of this section, all meetings of the homeowners association, including meetings of the board of directors or other governing body of the homeowners association or a committee of the homeowners association, shall be open to all members of the homeowners association or their agents;
- 2) All members of the homeowners association shall be given reasonable notice of all regularly scheduled open meetings of the homeowners association;
- 3) (i) This paragraph does not apply to any meeting of a governing body that occurs at any time before the lot owners, other than the developer,

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<sup>2</sup> There was an issue as to whether this document was filed with the Montgomery County Depository

have a majority of votes in the homeowners association, as provided in the declaration;

- (ii) Subject to subparagraph (iii) of this paragraph and to reasonable rules adopted by a governing body, a governing body shall provide a designated period of time during a meeting to allow lot owners an opportunity to comment on any matter relating to the homeowners association;
- (iii) During a meeting at which the agenda is limited to specific topics or at a special meeting, the lot owners' comments may be limited to the topics listed on the meeting agenda; and
- (iv) The governing body shall convene at least one meeting each year at which the agenda is open to any matter relating to the homeowners association;

4) A meeting of the board of directors or other governing body of the homeowners association or a committee of the homeowners association may be held in closed session only for the following purposes:

- (i) Discussion of matters pertaining to employees and personnel;
- (ii) Protection of the privacy or reputation of individuals in matters not related to the homeowners association's business;
- (iii) Consultation with legal counsel;

- (iv) Consultation with staff personnel, consultants, attorneys, or other persons in connection with pending or potential litigation;
- (v) Investigative proceedings concerning possible or actual criminal misconduct;
- (vi) Consideration of the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the homeowners association;
- (vii) Compliance with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or
- (viii) On an individually recorded affirmative vote of two-thirds of the board or committee members present, some other exceptional reason so compelling as to override the general public policy in favor of open meetings; and

5) If a meeting is held in closed session under paragraph (4) of this section:

- (i) An action may not be taken and a matter may not be discussed if it is not permitted by paragraph (4) of this section; and
- (ii) A statement of the time, place, and purpose of a closed meeting, the record of the vote of each board or committee member by which the meeting was closed, and the authority under this section for closing a

meeting shall be included in the minutes of the next meeting of the board of directors or the committee of the homeowner's association.

#### CONCLUSION OF LAW

The Stedwick Homes Corporation is governed by a Declaration of Covenants, Conditions and Documents and By-Laws duly filed and recorded in the land records of Montgomery County, Maryland. The Stedwick Homes Corporation Parking and Commercial Vehicle Rules and Regulations were validly recorded with the Montgomery County depository, were within the powers of the association and is a valid enforceable document. The process used and the manner in which it was implement was not arbitrary or capricious. The Stedwick Homes Corporation complied with its internal dispute process. The decision of the Stedwick Homes Corporation dated December 26, 2001 (Commission Exhibit # 1 – page 12) is valid and is consistent with the Association documents and reasonable business judgment.

#### FINDINGS

1. That the meeting held in executive session was held valid and appropriate under the circumstances and applicable law.
2. That Jeffrey Winans was not provided certain information despite the requirements of the Maryland Homeowners Association. However, the Respondent claimed that the request was not specific enough. Clearly, the sticker was placed on his vehicle as part of notice to him of the violation. We can believe that had the sticker not be placed, Mr. Winans would now



claim lack of notice. The Respondent admitted that its agent acted at its request, so his identity is irrelevant. See Section 11B-112(a)(2), authorizing the withholding of personnel records. Notwithstanding this, the panel believes that the Respondent shall honor the spirit of full disclosure in the future. If an enforcement action is justified, then forthright disclosure will not impair it.

3. That Stedwick Homes Corporation and Montgomery Village Foundation are two separate entities. The Montgomery Village Foundation is both the umbrella community and management company for Stedwick Homes Corporation. Mr. Winans also thought this was relevant, but its relevance was not established.
4. That the Complainants' previously owned truck was in direct violation of the Declaration and Rules. Furthermore, the panel finds that the Stedwick Homes Corporation Parking and Commercial Vehicles Rules and Regulates are not invalid, arbitrary or capricious. We understand Mr. Winan's point that his truck was pleasant in appearance and that the image of trucks has evolved over time. However, trucks can convey different images and Respondent's interpretation of its documents was reasonable. See Kirkley v. Seipelt, 212 Md. 127 (1957).

ORDER

In view of the foregoing, and based upon the evidence of the record, and for the reasons set forth above, it is the 12<sup>th</sup> day of November, 2002 by the Commission on Common Ownership Communities,

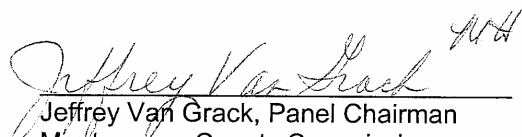
ORDERED that the Complainant's request is denied and as follows:

- 1) That the meeting in executive session is valid and was held in accordance with the spirit and intent of the applicable law. The respondent admits that they did not fully comply with the specific requirements of II B-III (4).
- 2) That the documents were not properly requested.
- 3) That Montgomery Village Foundation and Stedwick Homes Corporation are two separate entities.
- 4) That the parking policy is valid and enforceable.

The foregoing was concurred in by panel members Richard Price and Howard Cihak.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty days after

date of this Order, pursuant to the Maryland Rules and Procedures governing administrative appeals.

  
 Jeffrey Van Grack, Panel Chairman  
 Montgomery County Commission on  
 Common Ownership Communities

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**NOTE:** Although the matter was not part of the merits in this case, and the events occurred before April 3, 2002, the Commissioners was concerned that the notices pursuant to Section 10B-9(d) of the Montgomery County Code may not have complied with the section. The facts in this case are unclear as to the need of the required notice in this case, but the panel wishes to reiterate that generally there is a need to provide the required notice.